

Intergovernmental Personnel Act



2003 OGE Conference

Intergovernmental Personnel Act

5 U.S.C. §§ 3371-3375

- Permits assignments to and from universities and other entities
- Assignees may be either appointed or detailed
 - Appointees are Federal employees for most purposes
 - Detailees are not Federal employees for most purposes



Types of Assignments

- Incoming details
 - Employee is not a Federal employee
- Outgoing details
 - Employee remains employee of agency
- Incoming appointments
 - Employee becomes a Federal employee
- Outgoing appointments (LWOP)
 - Employee becomes employee of state; probably because of need to exercise authority

Incoming Detailees

- During the period of assignment, a detailee is deemed an employee of the agency for the purpose of:
 - chapter 73 of title 5 (non-criminal conduct provisions),
 - sections 203, 205, 207, 208, and 209 of title 18,
 - Ethics in Government Act
 - the Federal Tort Claims Act and any other Federal tort liability statute.



IPA Ethics Rules

- The criminal ethics statutes apply to assignees, regardless of appointment or detail
- Conflict of interest and post-employment statutes reinforce each other with respect to the detailee's home institution

IPA Ethics Rules

- Some non-criminal provisions apply to detailees (5 U.S.C. Chap. 73):
 - loyalty and striking
 - alcohol and drug abuse
 - gifts to superiors
 - gifts from prohibited sources
 - Foreign Gifts and Decorations Act
 - Hatch Act

IPA Ethics Rules

- Only specified statutes apply to detailees, so other provisions do not apply
- Financial disclosure did not apply to detailees until recently
 - See DAEOGram 12/9/02
- Ethics training and many other provisions apply to appointees, but do NOT apply to detailees



IPA Conflicts of Interest

- Conflict of interest statute applies to all incoming assignees
- Prohibits involvement in matters affecting the interests of the assignee, spouse, *or employer*
- Violation is subject to civil and criminal penalties, including up to five years imprisonment



IPA Conflicts of Interest

- Assignee's continuing employment relationship with home institution is a potential felony conflict of interest
- Rule: Assignees may not participate in matters their university has an interest in
 - includes making decisions or recommendations, giving advice, or influencing outcomes
 - includes both technical and business decisions



IPA Conflicts of Interest

- If assignee's university is involved in a program or project, most technical, business, and program management activities will be prohibited
- Many IPA conflict anomalies result from the duties contemplated by the assignment

Representational Activities

- Part-time IPAs
 - agreement may allow percentage of time for work for home institution
 - allows detailee to retain PI/Co-I status
 - but, §§ 203/205 apply to detailees
 - incoming IPAs may not represent before the gov't
 - may continue non-representational duties
 - contrast this with *outgoing* IPAs, who may be authorized to represent the outside institution before the gov't.

Post-employment

- Post-employment restrictions apply fully
- After assignment ends, assignee may not represent home institution to gov't:
 - forever: on contracts, grants or agreements the assignee worked on during assignment
 - for two years: on matters the assignee didn't actually work on, but was responsible for
 - for one year: on any matter if the assignee was paid at SES-5 or higher

IPA Ethics Guidelines

- Proposed assignments should be screened for potential conflicts prior to execution by the sponsoring office
- Administrative review is not sufficient, because IPA duty descriptions are often kept generic for flexibility
- Once in gov't, assignees must maintain strict disqualification from involvement with home institution

IPA Ethics Guidelines

- Ensure that assignees' IPA status is widely known within organization
- Detailees are not required by law to receive ethics training, but a training requirement should be added to IPA agreements
- Consider whether an assignment to a management position may be more appropriate for an appointment



IPA Ethics Guidelines

- Detailees should be provided with written ethics materials upon entry
- Detailees should be offered an opportunity to meet with local counsel to discuss potential conflicts